

**MINUTES
ENERGY FACILITY SITE EVALUATION
COUNCIL OF WASHINGTON**

September 24, 2004 Special Meeting

Fox Hall 3985 Bennett Drive,
Bellingham, Washington 2:00 P.M.

ITEM NO. 1: CALL TO ORDER

MR. LUCE: If the meeting will come to order. This is a meeting of the Washington State Energy Facility Site Evaluation Council. Today's date is September 24th, 2004 and we are here to hold a meeting and a decision meeting on the British Petroleum Cherry Point West Coast Products cogeneration project. I will first turn to our administrative law judge, Julian Dewell, who will have some opening remarks.

MR. DEWELL: Under the Revised Code of Washington 80.50.090 and the Washington Administrative Code 463-30-300, EFSEC conducted adjudicative site certification proceedings on an application for site certification filed by BP West Coast Products, LLC. These adjudicative proceedings concluded in July 2004. At the conclusion of the adjudicative proceedings, EFSEC, based on RCW 80.50.090 and 80.50.100 as well as WAC 463-30-320 and 463-30-310, is required to render a decision which includes a recital of the proceedings, findings of fact, conclusions of law, and a final order disposing of all contested issues. EFSEC must also adopt recommendations to the governor of the state of Washington asking that the governor either approve or disapprove the application for site certification.

The purpose of today's hearing or meeting is to allow the Council to publicly consider its decision based on the facts and the law. The final order will then be issued requesting that the governor either approve or disapprove the application. Jim Luce, EFSEC's chair, will now make certain remarks and conduct the rest of these proceedings.

ITEM NO. 2: ROLL CALL

MR. LUCE: Thank you, Judge Dewell. Before we go further, I would ask Allen Fiksdal, our manager, to call the roll of the Council.

EFSEC Council Members

Community, Trade & Economic Development

Department of Ecology

Department of Fish & Wildlife

Department of Natural Resources

Utilities and Transportation

Whatcom County

Chair

Richard Fryhling

Hedia Adelsman

Chris Towne

Tony Ifie

Tim Sweeney

Dan McShane

Jim Luce

MR. FIKSDAL: The Chair is present and there is a quorum.

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal
Ann Essko, AAG

Irina Makarow
Shaun Linse, Court Reporter

ITEM NO. 3: BP CHERRY POINT COGENERATION PROJECT

<i>Consideration of Application No. 2002-01 and Recommendation to the Governor</i>	<i>Jim Luce, EFSEC Chair</i>
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CHAIR LUCE: Thank you. At the outset this afternoon, I would like to thank all of you for coming here today and especially thank those of you who have been so actively involved in this proceeding from the beginning, frequently taking time away from your jobs and your families in order to be present to state your views to the Council. Your opinions are valued and they do matter. Counsel for the Applicant and counsel for the parties to this proceeding are to be complimented for presenting a clear case to the Council. The witnesses' testimony, the arguments regarding key issues, and the ensuing hard work on the settlements which have led us to this point are a testimony to first-rate legal representation. That includes the representation we have seen from our own assistant attorney general, Ann Essko, and our administrative law judge, Julian Dewell, who's presided over this case with such an even keel. In this proceeding, the BP West Coast Products proposes to locate the Cherry Point cogeneration project on a 33-acre site in the Cherry Point industrial area of unincorporated Whatcom County, Washington. The 720-megawatt project would be adjacent to the BP Cherry Point Refinery in an area zoned heavy impact industrial under the Whatcom County Code. It would be used to provide steam to the refinery allowing for the removal of antiquated and polluting boilers, and the sale of up to 635 megawatts of power for use to willing purchasers by interconnection to the Bonneville Power Administration's main transmission grid. Washington state law, RCW 80.50.010, directs the Energy Facility Site Evaluation Council, in considering whether to site projects, to assume, and I quote, "a pressing need for increased energy facilities and to ensure that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life." The state Environmental Policy Act requires that we consider significant adverse environmental impacts and look to mitigate such impacts. The Council also considers directives found in other required laws and regulations. The Council has complied with its statute and has considered this application through an adjudicative proceeding. The Council has complied with the requirements of the state Environmental Policy Act by considering the environmental impacts of the project and adopting and issuing an environmental impact statement. The Council has complied with the public notice and comment provisions required by state and federal laws and regulations for permits required by this project. Here all parties to this proceeding have agreed to settlement of all issues. In accepting such settlements, but also on its own independent review, the Council finds that the project is in the public interest and produces minimal adverse effects on the environment, ecology of the land, its wildlife and aquatic life. Council Member Ifie will address the issue of clean air; and, in this regard, it is important to note that a cogeneration project such as this is an important contributor to improving air quality. On the

subject of abundant power and reasonable cost, the cogeneration project adds to the diversification and reliability of the state's electrical generation capacity and thereby adds economic benefits to the region. The evidence in the record supports the conclusion that the region needs to continue to add electrical generation capacity. As a combined cycle cogeneration facility, the project will generate electricity more efficiently than a stand-alone thermal generating facility, thereby conserving natural gas resources and minimizing environmental impacts. The Council finds that the project will provide a benefit for the western power grid and the residences and businesses in this region. At the same time, the Applicant has committed to investments for environmental enhancement and has agreed to appropriate mitigation requirements for the project. Also, while not a siting issue, there are other economic benefits not to be overlooked. The BP Refinery, by adding this cogeneration project, is able to provide its own power supply and guard against fluctuations in prices in the power market that might otherwise adversely impact its ability to operate and its own employees' job security. I will now turn to my fellow Council members to address in more detail the specific mitigation benefits they see that justify the siting of this project, beginning with Council Member Tim Sweeney.

MR. SWEENEY: Thank you, Chairman. I'm not going to speak to the mitigation. My part here is just to speak a little bit about the timing of the process. I began as a -- as an EFSEC member pretty much as this application came in the door in June of 2002, so it's been my honor to be here from the beginning to the end. And, as many of you know, we have a statutory or legal requirement to review these things within a year's time. And as anybody can look at the calendar, that time has past, and so I wanted to speak to you a little bit about that because, at first glance, it doesn't look like we completed this within its time. It's clear that we needed -- that in terms of this process and this project being successful, all the time that was used was needed, but in terms of the EFSEC clock running, I think we met our year deadline when you take into consideration that from June 2002 quite a bit -- there were several delays granted at the Applicant's request to allow them to redesign the plant, particularly their cooling system, a very important change. And so, the clock then started really for us in April of 2003. And we held hearings here in December, much as Chairman Luce described, and held extensive hearings and were ready to move forward on that project, but again had to delay it for about six months as some very important discussions went on between the County and the Applicant. So we were delivered a settlement June 30th and here we are today. So if you actually count the meter running, the EFSEC meter running, I think we completed it within our year requirement. Thank you, Chairman Luce.

MR. LUCE: Thank you. The next Council member after Mr. Sweeney, the next Council member that will be presenting views here today is Mr. Ifie.

MR. IFIE: I'll be addressing the issue of air emissions. The Applicant has performed extensive modeling of impacts in both Whatcom County and the province of B.C. and has demonstrated to my satisfaction that there will be no significant impacts due to emissions from the project. The project has undergone vigorous review. Our review of this project has shown that the project complies with all state and federal regulations with respect to air emissions. In addition, the Applicant has committed to removing three existing boilers at the refinery, which will lead to net emission reductions from NO_x and PM₁₀ in the airshed. Also, the Applicant has committed to funding a renewable energy program, which will benefit the residents of Whatcom County, either a solar connection program or a commute reduction program. Overall, the project has

undergone a thorough review from which I support the findings of the Council that there are no unmitigated adverse impacts from the project. Thank you.

MR. LUCE: Thank you, Council Member Ifie. Council Person Adelsman.

MS. ADELSMAN: Thank you. I'm going to speak to the wetlands and similar issues. The construction of the project will disturb about 55 acres of wetlands, about 4.8 of those to be - actually temporarily disturbed, but there is about 30 acres that will be lost due to fill.

The wetlands, I should say they are -- they have been greatly disturbed in the past, so they are not, you know, intact wetlands; and the Applicant has proposed, it is our opinion, a very good mitigation package. The temporarily disturbed wetland will be restored once the construction is completed. Any wetland that is not going to be filled will actually be protected in accordance with both Ecology's and the Corps of Engineers' requirements, and the wetland that will be lost, about 30-plus acres, will be compensated to a ratio of three-to-one, which is about 110 acres of wetland that's right now kind of -- they are disturbed wetlands in agricultural land that will be both rehabilitated and enhanced and used as the mitigation. There will be a ten-year monitoring plan to make sure that the mitigation is successful. At the same time, the company has a plan to eradicate and to make sure that any invasive plants are not going to be moving into some of these areas. The stormwater issue, which is related, stormwater will be conditioned under an NPDES permit, and also there is going to be a stormwater pollution prevention plan. The stormwater itself, the Applicant is proposing and we accepted that the stormwater be contained, collected and then routed through some water detention plan; and, from there, there will be some cleaning to make sure to remove any oils, and also going into the ponds to remove the sediment and discharge to the wetland. We had some comments from people saying that they'd like to see the stormwater going to the wastewater treatment facilities. We believe with all the controls and cleaning, the -- the stormwater is much better to restore it back to the hydrology and put it back in the wetland, which then will recharge groundwater and keep it in the same hydrologic cycle. It's very important for water resources issues. So, with that, I would say both the issue of the stormwater and the wetland have been very well addressed.

MR. LUCE: Thank you. Thank you very much. One of the major issues that we discussed was the significant heron colony that is adjacent to the project. And Council Member Towne will address the heron colony issue and mitigation of impacts to the heron colony.

MS. TOWNE: The heron issue is inseparable from the wetland issue. The heron use the wetlands and adjacent areas. The question was, How could the mitigation be constructed and on what schedule so as to minimize disruption to the heron in the short term and provide better feeding and staging habitat in the long term? Several interesting issues arose. For instance, if a - a pond were created and were a year-round pond, it would encourage bullfrogs, which eat other amphibians on which the heron rely. So we had to have intermittent ponds so that, when they dried up, bullfrogs would find other places to live. It's just a small example of the trade-offs that come along. The same with the vegetation. If the grass is too tall, the herons can't see the moles. The herons rely on the moles for a substantial part of their diet. Therefore, plant selection in the wetland mitigation plan must also consider the herons' very specific habitat and food needs along with the -- a perfect wetland may not be perfect for herons, so it was a balancing act. The other thing I think it's important to be aware of is that BP has several other ongoing projects, the Brown Road material storage area habitat management plan, which deals with the great blue heron. The federal permitting process through the Corps of Engineers has its own set of regulations that are applicable here. And the piece that we are focused upon is the Whatcom -- BP/Whatcom County stipulation and settlement agreement, which was offered to us in July of

2004 and which the Council accepted, and that appendix which contains the results of the negotiations between the parties and specifies such things as adaptive management, hydrologic modification of impacts on the great heron species, accretion of connected forest areas, and so forth. And, if you are interested in this, I would commend it to your attention. It is Appendix F, I believe, and it contains all the specifics. Based on the Council's attention to the testimony at the adjudicatory proceedings and its review of the materials in that appendix and in the settlement agreement overall between the parties, the Council concluded that the herons will indeed be well served by the proposals which have now been incorporated into our proposed SCA, and there are provisions in case it doesn't work over a ten-year period for adaptive management. Given those safeguards, the Council was persuaded that this package will not do harm to the herons and, in fact, may well be beneficial to the herons.

MR. LUCE: Thank you, Council Member Towne. Another thing that affects the herons and humans is noise, and Council Member Fryhling will address the noise issue.

MR. FRYHLING: The Council heard a number of public comments about the impacts of the existing industrial noise to their lives in their residences, and they expressed concerns that the new cogeneration facility will add to the noise. Under state law, the cogeneration project is required to meet the state environmental noise level standards as found in Chapter 173-60 of the WACs. The Applicant and Whatcom County worked hard and came up with an amended stipulation agreement that the Applicant will monitor the project operation noise levels at five different locations in proximity to the plant to make sure the noise levels do not exceed criteria established by the County. If the noise levels are exceeded, the Applicant will research and find the causes of the -- the additional noise and take appropriate action to mitigate the measures.

We've had other plants that have experienced noise problems and they have the technology and the ability to monitor the noises and abate those and have been very successful.

MR. LUCE: Thank you. Our local member, County member, is Dan McShane. Dan has followed the traffic and lighting issues very closely, and I've asked Dan to address the mitigation that will occur to those at this time.

MR. McSHANE: The Council recognizes that construction traffic at a facility such as the project is significant. However, local users of public roads around the refinery are already subject to similar traffic volume increases during periods when the refinery goes -- undergoes maintenance. The Applicant has entered into a letter of understanding with Washington State Department of Transportation to improve the intersection of Grandview and Blaine roads during construction. The Applicant has integrated a number of measures into the design of the project to minimize impacts to visual resources, including implementing a site management plan to minimize overall visual impacts associated with construction, painting cogeneration facility elements gray to reduce surface glare from direct sunlight, using the area between the cogeneration facility and Grandview Road to plant visual vegetation buffers and screens, and design project lighting to minimize light spill-over.

MR. LUCE: Thank you. Once again, the Council wants to commend the Applicant, Whatcom County, counsel for the environment, and all parties who worked together to settle the issues regarding this project. They are to be congratulated for finding common-sense solutions that provide abundant power at reasonable cost while protecting the environment and the public interest. In addition to helping protect the environment, the project will produce needed jobs and tax revenue for Whatcom County and the state of Washington. Council members, before us is an order that recommends to the governor of the state of Washington that he approve the application to construct and operate the BP Cherry Point cogeneration project. Attached to it is a site

certification agreement that contains the provisions required to mitigate the impacts that have been identified through our review process and that have been discussed here today. Included are a Notice Of Construction and Prevention Of Deterioration permit -- conditioning emissions into the atmosphere, and also a wastewater disposal and NPDES permit limiting the discharge of pollutants into the state's waters. Do I hear a motion to issue the order to recommend that the governor approve this project?

MS. TOWNE: So moved.

MR. FRYHLING: I second that.

MR. LUCE: We have a motion and a second. Council members, do we have any discussion?

MR. SWEENEY: Question.

MR. LUCE: The question's been called for. Mr. Fiksdal, would you please call the roll?

MR. FIKSDAL: Department of Community Trade & Economic Development.

MR. FRYHLING: I vote yes in regard to the project.

MR. FIKSDAL: Department of Ecology.

MS. ADELSMAN: Yes.

MR. FIKSDAL: Department of Fish & Wildlife.

MS. TOWNE: Chris Smith Towne votes yes on behalf of the Department of Fish & Wildlife.

MR. FIKSDAL: Department of Natural Resources.

MR. IFIE: I vote yes in support of the project.

MR. FIKSDAL: Utilities & Transportation Commission.

MR. SWEENEY: Yes.

MR. FIKSDAL: Whatcom County.

MR. McSHANE: Yes.

MR. FIKSDAL: EFSEC chair.

MR. LUCE: Yes.

MR. FIKSDAL: It is unanimous, Mr. Chairman.

MR. LUCE: The vote is unanimous and the recommendation to the governor shall be to recommend approval of the BP Cherry Point cogeneration project.

ITEM NO. 4: ADJOURN

CHAIR LUCE: There being no other business before the Council today, the meeting is adjourned.

(The meeting was adjourned at 2:22 p.m.)